IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.181 of 2006
IN
SUMMARY SUIT NO.3234 of 2005

Rajkumar Jugalkishore Saraf ...Plaintiff

V/s.

M/s.Layer Exports Pvt.Ltd. & Ors. ...Defendants

Shri.M.U. Pandey for the plaintiff.
Shri.V. Subramanian i/b I.P. Bagaria for defendants.

CORAM : D.K. DESHMUKH, J.
DATED : 29/08/2006

P.C.:-

1. Suit is based on the consent terms arrived at between the parties in a suit filed in Small Causes Court.

2. It appears from the records that thereafter defendants sent a cheque of Rs.5,00,000/- to the plaintiff, stating clearly in forwarding letter that an amount of Rs.5,00,000/- has been paid as “full and final payment of liability to be paid by us to you. Please note that now nothing is due & payable by us to you in pursuant to consent term.”

3. Admittedly, plaintiff did not write any letter back disputing statement that 5,00,000/- were paid to the plaintiff as full and final settlement under the consent terms. Admittedly plaintiff has encashed the cheque. It, therefore, prima facie appears that the plaintiff has given up his claim to make any other recovery under consent terms. Defence put up by the defendants can not be termed as merely moonshine defence. Defence put up by the defendants has some substance. Therefore, decree can not be passed in favour of the plaintiff. Summons for judgment is disposed of. Defendants are granted leave to defend the suit. Written statement to be filed within eight weeks. Suit be transferred to commercial cause list.

(D.K. DESHMUKH, J.)